

Small Business Administration

§ 107.855

penalty under paragraph (d)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If SBA determines that a prepayment penalty is unreasonable, you must refund the entire penalty to the Small Business. A prepayment penalty equal to 5 percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered reasonable.

§ 107.835 Exceptions to minimum duration/term of Financing.

You may make a Short-term Financing for a term less than five years if the Financing is:

(a) An interim financing (for a period not to exceed one year) in contemplation of long-term Financing. The contemplated long-term Financing must be in an amount at least equal to the short-term Financing, and must be made by you alone or in participation with other investors; or

(b) For protection of your prior investment(s); or

(c) For the purpose of Financing a change of ownership under § 107.750. The total amount of such Financings may not exceed 20 percent of your Loans and Investments (at cost) at the end of any fiscal year; or

(d) An LMI Investment with a term of at least one year; or

(e) For the purpose of aiding a Small Business in performing a contract awarded under a Federal, State, or local government set-aside program for "minority" or "disadvantaged" contractors.

[61 FR 3189, Jan. 31, 1996, as amended at 64 FR 52646, Sept. 30, 1999]

§ 107.840 Maximum term of Financing.

The maximum term of any Loan or Debt Security Financing must be no longer than 20 years.

§ 107.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan (or the loan portion of a Debt Security) with a term of five years or less cannot be amortized faster than straight line. If the

term is greater than five years, the principal cannot be amortized faster than straight line for the first five years.

§ 107.850 Restrictions on redemption of Equity Securities.

(a) A Portfolio Concern cannot be required to redeem Equity Securities earlier than five years (or one year in the case of an LMI Investment) from the date of the first closing unless:

(1) The concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on investment, in which case the new securities may be redeemed in less than five years, but no earlier than the redemption date associated with your earliest Financing of the concern.

(b) The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the concern (such as one based on earnings or book value); or

(ii) The fair market value of the concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

[61 FR 3189, Jan. 31, 1996, as amended at 64 FR 52646, Sept. 30, 1999]

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money").

"Cost of Money" means the interest and other consideration that you receive from a Small Business. Subject to lower ceilings prescribed by local law, the Cost of Money to the Small Business must not exceed the ceiling determined under this section.